



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R03-OAR-2012-0511; FRL- 9822-6]**

### **Approval and Promulgation of Air Quality Implementation Plans; Maryland; Low Emission Vehicle Program**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Maryland on December 20, 2007, November 12, 2010, and June 22, 2011, as amended March 22, 2013. These SIP revisions pertain to adoption by Maryland of a Low Emission Vehicle (LEV) program, which incorporates by reference California's second generation Low Emission Vehicle (LEVII) program regulations. Maryland's LEV regulations require new 2011 and subsequent model year passenger cars, light trucks, and medium-duty vehicles having a gross vehicle weight rating (GVWR) of 14,000 pounds or less that are sold in Maryland to meet California emission standards. The Clean Air Act (CAA) contains authority by which states other than California may adopt new motor vehicle emissions standards that are identical to California's standards. Maryland's supplemental SIP revisions submitted on November 12, 2010 and June 22, 2011 modify its program to harmonize with updates by California to its LEVII program and Federal GHG standards effective on 2012-2016 model year vehicles. The March 22, 2013 SIP amendment withdraws from the SIP revision submittal the portion of Maryland's LEV program rule that incorporates by reference a provision of California's rule regulating retrofit systems for conversion of motor vehicles to use natural gas or liquefied petroleum gas in lieu of the fuel on which they were originally certified. EPA is approving all of Maryland's LEV Program SIP

revisions, except for the portion of Maryland's regulation withdrawn by Maryland from the SIP on March 22, 2013, in accordance with the requirements of the CAA.

**DATES:** This final rule is effective on [insert date 30 days from date of publication].

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number **EPA-R03-OAR-2012-0511**. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

**FOR FURTHER INFORMATION CONTACT:** Brian Rehn, (215) 814-2176, or by e-mail at [rehn.brian@epa.gov](mailto:rehn.brian@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On August 23, 2012 (77 FR 50969), EPA published in the Federal Register a notice of proposed rulemaking (NPR) for the State of Maryland proposing approval of three SIP revisions related to Maryland's LEV program. The first of these Maryland SIP revisions was submitted to EPA on

December 20, 2007 (#07-16) and included Maryland's Low Emission Vehicle Program, as adopted by the state in 2007. On November 12, 2010, Maryland submitted a revision to the 2007 SIP submittal (#10-08) to amend its Clean Car Program rules to incorporate changes made by California to its LEV regulations since Maryland's initial adoption of the program in 2007. On June 22, 2011, Maryland submitted another SIP revision (#11-05) consisting of updates to Maryland's program regulations adopting additional changes made by California to its own rules since Maryland's regulatory changes made as part of the 2010 SIP submittal. On March 22, 2013, Maryland submitted a letter to EPA formally withdrawing a portion of the SIP revision submitted June 22, 2011. Specifically, Maryland requested withdrawal of a section of its LEV program rule (COMAR 26.11.34.02B(17)), which incorporated by reference section 2030 of Division 3, Chapter 1, Article 5 of Title 13 of the California Code of Regulations for natural gas and liquefied petroleum gas retrofit systems.

## **II. Summary of SIP Revision**

A detailed description of Maryland's and California's Low Emission Vehicle program is provided in the NPR published in the Federal Register on August 23, 2012 (77 FR 50969), and will not be repeated here. However, a brief summary of Maryland's SIP revision is provided below.

### **A. Maryland's Low Emission Vehicle Program**

Maryland adopted into law the Maryland Clean Cars Act of 2007, the purpose of which was to implement California's LEV program in Maryland. The purpose of doing so was to improve ambient air quality in Maryland. This statute compelled the Maryland Department of Environment to adopt a rule in November 2007, which established a new Maryland regulatory

chapter COMAR 26.11.34, entitled “Low Emission Vehicle Program.”

The regulation requires that 2011 and newer model year passenger cars, light-duty trucks, and medium-duty vehicles (with a GVWR of 14,000 pounds or less that are sold in Maryland as new cars, or that are transferred in Maryland) meet the applicable California LEVII emissions standards. The objectives of the program are twofold. The first is to reduce emissions of nitrogen oxide (NO<sub>x</sub>) and volatile organic compound (VOC) emissions, which are ground-level ozone precursor pollutants. The program relies on decreasing fleet average emission standards, applicable to each vehicle manufacturer each year. This program uses varying standards established by California, ranging from LEV standards to zero emission vehicle (ZEV) standards, which are the most stringent standards set. In between these fall: Ultra-Low Emission Vehicles (ULEV), Super-Ultra Low Emission Vehicles (SULEV), Partial Zero Emission Vehicles (PZEV), and Advanced Technology-Partial Zero Emission Vehicles (AT-PZEV). Each manufacturer complies by selling a mix of vehicles meeting any of these standards, as long as their sales-weighted, overall average of the various standard sets meets the overall fleet average and ZEV requirements. Maryland has adopted California’s second generation of LEV program rules, or LEV II, which were approved by California on October 28, 1999, and became effective in California on November 27, 1999. Maryland has not adopted or submitted to EPA for SIP approval subsequently adopted California rules, including California’s LEV III program rules.

The second objective of Maryland’s LEV program is to reduce greenhouse gas (GHG) emissions from subject new vehicles purchased for use in Maryland. The GHG program also makes use of a fleet average compliance method (similar in methodology to that of the non-methane organic

gas (NMOG) fleet average standard portion of the LEV program), which serves as a means to reduce ground level ozone and air toxics pollution. Overall compliance is demonstrated by showing that the entire fleet of vehicles produced by each manufacturer (as distributed within the allowable standard sets) meets the specified fleet average NMOG and GHG standards.

## **B. Maryland's Clean Car Program SIP Revisions**

Maryland initially adopted regulations .01 to .14 under COMAR 26.11.34, which is a new chapter entitled "Low Emission Vehicle Program." Maryland formally submitted a SIP revision for the Maryland Clean Car Program to EPA on December 20, 2007.

Maryland subsequently amended regulation .02 (entitled "Incorporation by Reference") of COMAR 26.11.34 via a proposed state action published in the Maryland Register on August 14, 2009, followed by a final action published on November 6, 2009. Maryland submitted this amendment to EPA as a SIP revision on November 12, 2010.

Maryland once more amended regulation .02 (Incorporation by Reference) of COMAR 26.11.34. Maryland submitted a SIP revision to EPA on June 22, 2011 to amend the prior SIP revisions to reflect this most recent state regulatory amendment to the Maryland LEV program rule. On March 22, 2013, Secretary Summers of the Maryland Department of the Environment submitted a letter to EPA's Regional Administrator Shawn Garvin formally withdrawing a portion of the June 22, 2011 SIP revision.

The specific requirements and other details of Maryland's LEV program SIP revisions and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. EPA received adverse comments during the public comment period on our August 23, 2012 NPR.

A summary of those comments and EPA's responses are provided in Section III of this action.

### **III. Summary of Public Comments and EPA Responses**

**Comment:** The commenter challenges Maryland's authority to adopt, by reference, California's motor vehicle regulations for alternative fuel aftermarket systems, found in California's Code of Regulations (CCR), at 13 CCR 2030. The commenter argues that the authority in section 177 of the CAA allowing other states to adopt California's standards (which are waived from preemption under CAA section 209(b)) is limited to new motor vehicles and motor vehicle engines, and that this authority does not extend to adoption of California's regulations governing aftermarket alternative fuel systems. Further, the commenter argues that CAA section 209(c) preempts states other than California from adopting aftermarket parts regulations when EPA has acted on its authority to regulate such parts under Federal law. The commenter argues that the portion of California's regulation (13 CCR 2030) which Maryland has incorporated by reference has not been updated in many years and is functionally outdated and conflicts in some aspects with more recent Federal rules on the subject.

**Response:** On March 22, 2013, Maryland officially withdrew the portion of Maryland's LEV Program SIP Revision #11-05 which this commenter is addressing. Specifically, Maryland requested withdrawal of COMAR 26.11.34.02B(17), which served to adopt by reference §2030 of Division 3, Chapter 1, Article 5 of Title 13 of the CCR. EPA is taking final rulemaking action on the remaining portions of the Maryland SIP submittals from December 20, 2007, November 12, 2010, and June 22, 2011. Because Maryland has withdrawn this portion of the SIP and because EPA is not taking any final rulemaking action on COMAR 26.11.34.02B(17), the commenter's arguments related to CAA sections 177 and 209 are not relevant to this final action.

**Comment:** Several commenters generally supported efforts to reduce greenhouse gas emissions from new light to medium duty vehicles, per Maryland’s LEV program. One commenter expressed disappointment that Federal law under the CAA limits states choices to adoption of either California new vehicle standards or Federal standards, rather than allowing states to adopt their own more stringent standards. The commenter argues that the current pace in limiting GHG emissions is insufficient to limit climate change or to ameliorate damage already done.

**Response:** EPA appreciates the commenters’ support for clean vehicle programs and the commensurate GHG benefits resulting from adoption of a LEV program. With respect to states’ authority to adopt their own standards different from Federal new vehicle standards or those of California, Congress explicitly limited this authority with the prohibition language of section 209 of the CAA. That section states that “no State or political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or motor vehicle engines subject to this part.” That same section of the CAA allows the Administrator to waive that prohibition for California, which had already adopted standards to control new motor vehicle emissions prior to March 30, 1966. Further, section 177 of the CAA allows any state with an approved SIP plan to adopt and enforce standards for new motor vehicles or motor vehicle engines that are identical to California standards for which a waiver has been granted, if specified lead time requirements are met. Congress was explicit in the relevant CAA authority of their intent to grant states the option to adopt either California or Federal vehicle emission standards – and also to prohibit states from independently adopting or enforcing any third set of vehicle standards.

#### **IV. Final Action**

EPA is approving three SIP revisions submitted by Maryland with respect to Maryland's adoption of a Low Emission Vehicle Program into the Maryland SIP. These SIP revisions were submitted on December 20, 2007; November 12, 2010; and June 22, 2011. EPA is excluding from final approval COMAR 26.11.34.02B(17), as Maryland formally requested withdrawal of that regulatory provision in a letter to EPA dated March 22, 2013.

#### **V. Statutory and Executive Order Reviews**

##### **A. General Requirements**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);



- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

## **B. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory

Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

### **C. Petitions for Judicial Review**

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action to approve the Maryland Low Emission Vehicle Program into the Maryland SIP may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

**List of Subjects in 40 CFR part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 28, 2013.

W. C. Early,  
Acting Regional Administrator,  
Region III.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

**Subpart V--Maryland**

2. In § 52.1070, the table in paragraph (c) is amended by adding entries in numerical order for COMAR 26.11.34 to read as follows:

**§ 52.1070 Identification of plan.**

\* \* \* \* \*

(c)\* \* \*

EPA-Approved Regulations, Technical Memoranda, and Statutes in the Maryland SIP

| <b>Code of Maryland administrative regulations (COMAR) citation</b> | <b>Title/subject</b>                 | <b>State effective date</b>     | <b>EPA approval date</b>   | <b>Additional explanation/ citation at 40 CFR 52.1100</b> |
|---|--------------------------------------|---------------------------------|--|---|
| * * * * *   | * * * * *                            | * * * * *                       | * * * * *  |   |
| <b>26.11.34</b>   | <b>Low Emissions Vehicle Program</b> |                                 |  |   |
| 26.11.34.01   | Purpose                              | 12/17/07                        | [Insert Federal Register publication date]<br>[Insert page number where the document begins] |   |
| 26.11.34.02<br>(except .02B(17))                                    | Incorporation by Reference           | 5/16/11<br>11/16/09<br>12/17/07 | [Insert Federal Register publication date]<br>[Insert page number where the document begins] |   |
| 26.11.34.03   | Applicability and Exemptions         | 12/17/07                        | [Insert Federal Register publication date]   |   |

| <b>Code of Maryland administrative regulations (COMAR) citation</b> | <b>Title/subject</b>                      | <b>State effective date</b> | <b>EPA approval date</b>   | <b>Additional explanation/ citation at 40 CFR 52.1100</b> |
|---|---|-----------------------------|--|---|
|   |   |                             | [Insert page number where the document begins]   |   |
| 26.11.34.04   | Definitions                               | 12/17/07                    | [Insert Federal Register publication date]<br>[Insert page number where the document begins] |   |
| 26.11.34.05   | Emissions Requirements                    | 12/17/07                    | [Insert Federal Register publication date]<br>[Insert page number where the document begins] |   |
| 26.11.34.06   | Fleet Average NMOG Requirements           | 12/17/07                    | [Insert Federal Register publication date]<br>[Insert page number where the document begins] |   |
| 26.11.34.07   | Initial NMOG Credit Account Balances      | 12/17/07                    | [Insert Federal Register publication date]<br>[Insert page number where the document begins] |   |
| 26.11.34.08   | Fleet Average Greenhouse Gas Requirements | 12/17/07                    | [Insert Federal Register publication date]<br>[Insert page number where the document begins] |   |
| 26.11.34.09   | Zero Emission Vehicle (ZEV) Requirements  | 12/17/07                    | [Insert Federal Register publication date]<br>[Insert page number where the document begins] |   |
| 26.11.34.10   | Initial ZEV Credit Account Balances       | 12/17/07                    | [Insert Federal Register publication date]<br>[Insert page number where the document begins] |   |

| <b>Code of Maryland administrative regulations (COMAR) citation</b> | <b>Title/subject</b>                  | <b>State effective date</b> | <b>EPA approval date</b>   | <b>Additional explanation/ citation at 40 CFR 52.1100</b> |
|---|---------------------------------------|-----------------------------|--|---|
|   |                                       |                             | <u>begins]</u>   |   |
| 26.11.34.11   | Vehicle Testing                       | 12/17/07                    | [Insert Federal Register publication date]<br>[Insert page number where the document begins] |   |
| 26.11.34.12   | Warranty                              | 12/17/07                    | [Insert Federal Register publication date]<br>[Insert page number where the document begins] |   |
| 26.11.34.13   | Manufacturer Compliance Demonstration | 12/17/07                    | [Insert Federal Register publication date]<br>[Insert page number where the document begins] |   |
| 26.11.34.14   | Enforcement                           | 12/17/07                    | [Insert Federal Register publication date]<br>[Insert page number where the document begins] |   |
| * * * *   | * * *                                 |                             |  |   |

\* \* \* \*

[FR Doc. 2013-13717 Filed 06/10/2013 at 8:45 am; Publication Date: 06/11/2013]